

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 852
93RD GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, March 15, 2006, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

3934S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 143.471, RSMo, and to enact in lieu thereof three new sections relating to corporate franchise tax credits for S corporation shareholders.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 143.471, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 143.471, 148.655, and 148.657, to read as follows:

143.471. 1. An S corporation, as defined by Section 1361 (a)(1) of the Internal Revenue Code, shall not be subject to the taxes imposed by section 143.071, or other sections imposing income tax on corporations.

2. A shareholder of an S corporation shall determine such shareholder's S corporation modification and pro rata share, including its character, by applying the following:

(1) Any modification described in sections 143.121 and 143.141 which relates to an item of S corporation income, gain, loss, or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the shareholder's pro rata share of such item shall be determined in accordance with his pro rata share, for federal income tax purposes, of S corporation taxable income or loss generally;

(2) Each item of S corporation income, gain, loss, or deduction shall have the same character for a shareholder pursuant to sections 143.005 to 143.998 as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a shareholder as if realized directly from the source from which realized by the S corporation

20 or incurred in the same manner as incurred by the S corporation.

21 3. A nonresident shareholder of an S corporation shall determine such
22 shareholder's Missouri nonresident adjusted gross income and his or her
23 nonresident shareholder modification by applying the provisions of this
24 subsection. Items shall be determined to be from sources within this state
25 pursuant to regulations of the director of revenue in a manner consistent with the
26 division of income provisions of section 143.451, section 143.461, or section
27 32.200, RSMo (Multistate Tax Compact). In determining the adjusted gross
28 income of a nonresident shareholder of any S corporation, there shall be included
29 only that part derived from or connected with sources in this state of the
30 shareholder's pro rata share of items of S corporation income, gain, loss or
31 deduction entering into shareholder's federal adjusted gross income, as such part
32 is determined pursuant to regulations prescribed by the director of revenue in
33 accordance with the general rules in section 143.181. Any modification described
34 in subsections 2 and 3 of section 143.121 and in section 143.141, which relates to
35 an item of S corporation income, gain, loss, or deduction shall be made in
36 accordance with the shareholder's pro rata share, for federal income tax purposes,
37 of the item to which the modification relates, but limited to the portion of such
38 item derived from or connected with sources in this state.

39 4. The director of revenue shall permit S corporations to file composite
40 returns and to make composite payments of tax on behalf of its nonresident
41 shareholders not otherwise required to file a return. If the nonresident
42 shareholder's filing requirements result solely from one or more interests in any
43 other partnerships or subchapter S corporations, that nonresident shareholder
44 may be included in the composite return.

45 5. If an S corporation pays or credits amounts to any of its nonresident
46 individual shareholders as dividends or as their share of the S corporation's
47 undistributed taxable income for the taxable year, the S corporation shall either
48 timely file with the department of revenue an agreement as provided in
49 subsection 6 of this section or withhold Missouri income tax as provided in
50 subsection 7 of this section. An S corporation that timely files an agreement as
51 provided in subsection 6 of this section with respect to a nonresident shareholder
52 for a taxable year shall be considered to have timely filed such an agreement for
53 each subsequent taxable year. An S corporation that does not timely file such an
54 agreement for a taxable year shall not be precluded from timely filing such an
55 agreement for subsequent taxable years. An S corporation is not required to

56 deduct and withhold Missouri income tax for a nonresident shareholder if:

57 (1) The nonresident shareholder not otherwise required to file a return
58 agrees to have the Missouri income tax due paid as part of the S corporation's
59 composite return;

60 (2) The nonresident shareholder not otherwise required to file a return
61 had Missouri assignable federal adjusted gross income from the S corporation of
62 less than twelve hundred dollars;

63 (3) The S corporation is liquidated or terminated;

64 (4) Income was generated by a transaction related to termination or
65 liquidation; or

66 (5) No cash or other property was distributed in the current and prior
67 taxable year.

68 6. The agreement referred to in subdivision (1) of subsection 5 of this
69 section is an agreement of a nonresident shareholder of the S corporation to:

70 (1) File a return in accordance with the provisions of section 143.481 and
71 to make timely payment of all taxes imposed on the shareholder by this state
72 with respect to income of the S corporation; and

73 (2) Be subject to personal jurisdiction in this state for purposes of the
74 collection of income taxes, together with related interest and penalties, imposed
75 on the shareholder by this state with respect to the income of the S corporation.
76 The agreement will be considered timely filed for a taxable year, and for all
77 subsequent taxable years, if it is filed at or before the time the annual return for
78 such taxable year is required to be filed pursuant to section 143.511.

79 7. The amount of Missouri income tax to be withheld is determined by
80 multiplying the amount of dividends or undistributed income allocable to
81 Missouri that is paid or credited to a nonresident shareholder during the taxable
82 year by the highest rate used to determine a Missouri income tax liability for an
83 individual, except that the amount of the tax withheld may be determined based
84 on withholding tables provided by the director of revenue if the shareholder
85 submits a Missouri withholding allowance certificate.

86 8. An S corporation shall be entitled to recover for a shareholder on whose
87 behalf a tax payment was made pursuant to this section, if such shareholder has
88 no tax liability.

89 9. With respect to S corporations that are banks or bank holding
90 companies, a pro rata share of the tax credit for the tax payable pursuant to
91 chapter 148, RSMo, shall be allowed against each S corporation shareholders'

92 state income tax as follows, provided the bank otherwise complies with section
93 148.112:

94 (1) The credit allowed by this subsection shall be equal to the bank tax
95 calculated pursuant to chapter 148, RSMo, based on bank income in 1999 and
96 after, on a bank that makes an election pursuant to 26 U.S.C. Section 1362, and
97 such credit shall be allocated to the qualifying shareholder according to stock
98 ownership, determined by multiplying a fraction, where the numerator is the
99 shareholder's stock, and the denominator is the total stock issued by such bank
100 or bank holding company;

101 (2) The tax credit authorized in this subsection shall be permitted only to
102 the shareholders that qualify as S corporation shareholders, provided the stock
103 at all times during the taxable period qualifies as S corporation stock as defined
104 in 26 U.S.C. Section 1361, and such stock is held by the shareholder during the
105 taxable period. The credit created by this section on a yearly basis is available
106 to each qualifying shareholder, including shareholders filing joint returns. A
107 bank holding company is not allowed this credit, except that, such credit shall
108 flow through to such bank holding company's qualified shareholders, and be
109 allocated to such shareholders under the same conditions; and

110 (3) In the event such shareholder cannot use all or part of the tax credit
111 in the taxable period of receipt, such shareholder may carry forward such tax
112 credit for a period of the lesser of five years or until used, provided such credits
113 are used as soon as the taxpayer has Missouri taxable income.

114 **10. With respect to S corporations that are associations, a pro**
115 **rata share of the tax credit for the tax payable under chapter 148,**
116 **RSMo, shall be allowed against each S corporation shareholders' state**
117 **income tax as follows, provided the association otherwise complies with**
118 **section 148.655, RSMo:**

119 (1) **The credit allowed by this subsection shall be equal to the**
120 **savings and loan association tax calculated under chapter 148, RSMo,**
121 **based on the computations provided in section 148.150, RSMo, on an**
122 **association that makes an election under 26 U.S.C. Section 1362, and**
123 **such credit shall be allocated to the qualifying shareholder according**
124 **to stock ownership, determined by multiplying a fraction, where the**
125 **numerator is the shareholder's stock, and the denominator is the total**
126 **stock issued by the association;**

127 (2) **The tax credit authorized in this subsection shall be**

128 permitted only to the shareholders that qualify as S corporation
129 shareholders, provided the stock at all times during the taxable period
130 qualifies as S corporation stock as defined in 26 U.S.C. Section 1361,
131 and such stock is held by the shareholder during the taxable
132 period. The credit created by this section on a yearly basis is available
133 to each qualifying shareholder, including shareholders filing joint
134 returns. A savings and loan association holding company is not allowed
135 this credit, except that, such credit shall flow through to such savings
136 and loan association holding company's qualified shareholders, and be
137 allocated to such shareholders under the same conditions; and

138 (3) In the event such shareholder cannot use all or part of the
139 tax credit in the taxable period of receipt, such shareholder may carry
140 forward such tax credit for a period of the lesser of five years or until
141 used, provided such credits are used as soon as the taxpayer has
142 Missouri taxable income.

143 11. With respect to S corporations that are credit institutions, a
144 pro rata share of the tax credit for the tax payable under chapter 148,
145 RSMo, shall be allowed against each S corporation shareholders' state
146 income tax as follows, provided the credit institution otherwise
147 complies with section 148.657, RSMo:

148 (1) The credit allowed by this subsection shall be equal to the
149 credit institution tax calculated under chapter 148, RSMo, based on the
150 computations provided in section 148.150, RSMo, on a credit institution
151 that makes an election under 26 U.S.C. Section 1362, and such credit
152 shall be allocated to the qualifying shareholder according to stock
153 ownership, determined by multiplying a fraction, where the numerator
154 is the shareholder's stock, and the denominator is the total stock issued
155 by such credit institution;

156 (2) The tax credit authorized in this subsection shall be
157 permitted only to the shareholders that qualify as S corporation
158 shareholders, provided the stock at all times during the taxable period
159 qualifies as S corporation stock as defined in 26 U.S.C. Section 1361,
160 and such stock is held by the shareholder during the taxable
161 period. The credit created by this section on a yearly basis is available
162 to each qualifying shareholder, including shareholders filing joint
163 returns. A credit institution holding company is not allowed this
164 credit, except that, such credit shall flow through to such credit

165 institution holding company's qualified shareholders, and be allocated
166 to such shareholders under the same conditions; and

167 (3) In the event such shareholder cannot use all or part of the
168 tax credit in the taxable period of receipt, such shareholder may carry
169 forward such tax credit for a period of the lesser of five years or until
170 used, provided such credits are used as soon as the taxpayer has
171 Missouri taxable income.

148.655. Subchapter S corporation shareholders of an association
2 required to pay franchise taxes under section 148.620, may take a tax
3 credit against such shareholder's state income tax return, as provided
4 in section 143.471, RSMo. Such tax credit shall be the taxpayer's pro
5 rata share of the franchise tax paid by the association as provided in
6 this chapter.

148.657. Subchapter S corporation shareholders of a credit
2 institution required to pay franchise taxes under section 148.620, may
3 take a tax credit against such shareholder's state income tax return, as
4 provided in section 143.471, RSMo. Such tax credit shall be the
5 taxpayer's pro rata share of the franchise tax paid by the credit
6 institution as provided in this chapter.

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